

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
3:09cv107-03-MU  
(3:99CR109-MU)

FRANCISCO CURBELO, )  
)  
Petitioner, )  
)  
v. )  
)  
UNITED STATES OF AMERICA, )  
)  
)  
Respondent. )

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**ORDER**

**THIS MATTER** comes before the Court upon Petitioner's Motion to Vacate, Set Aside, or Correct Sentence, filed March 18, 2009 (Document No. 1.)

Pursuant to Rule 2 of the Rules Governing Section 2255 Proceedings for the United States District Courts, a petitioner must sign his motion under penalty of perjury. Petitioner did not sign his petition. Consequently, this Court is dismissing Petitioner's Motion to Vacate without prejudice for failure to comply with the requirements of Rule 2(b)(5) of the Rules Governing Section 2255 Proceedings for the United States District Courts.

The Court cautions Petitioner that if he decides to re-file his Motion to Vacate, he must be cognizant of the Antiterrorism and Effective Death Penalty Act's one year limitations period. It appears that the Supreme Court denied certiorari on May 27, 2008. Therefore, Petitioner's one year limitations period would expire on May 27, 2009. Petitioner must be mindful of that

calculation if he chooses to re-file his Motion to Vacate.<sup>1</sup>

**THEREFORE, IT IS HEREBY ORDERED** that Petitioner's Motion to Vacate, Set Aside, or Correct Sentence is **DISMISSED without prejudice**.

**SO ORDERED.**

Signed: March 18, 2009

A handwritten signature in black ink, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen  
United States District Judge



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<sup>1</sup> Should Petitioner re-file, he need only file one copy of his Motion to Vacate and any supporting documents.